

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ART MEDIA LLC,

Plaintiff,

- against -

CHRISTOPHER BRANT,

Defendant.
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USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: March 5, 2021

19 Civ. 11218 (VM)

DECISION AND ORDER

VICTOR MARRERO, United States District Judge.

Plaintiff and Counterclaim Defendant Art Media LLC ("Art Media") brought this action on December 6, 2019 against Defendant and Counterclaim Plaintiff Christopher Brant ("Brant") for breach of contract. (See Dkt. No. 1.) In his Answer, Brant raised sixteen affirmative defenses. (See Dkt. No. 11.) In a jointly filed letter, Art Media expressed an intent to move to strike Brant's affirmative defenses, and Brant expressed an intent to seek leave to assert counterclaims against Art Media. (See Dkt. No. 18.) Brant subsequently filed an Amended Answer that pled five affirmative defenses and asserted counterclaims for breach of contract and breach of the covenant of good faith and fair dealing. (See Dkt. No. 24.)

On July 1, 2020, Art Media moved to dismiss the counterclaims and strike three of Brant's affirmative defenses. ("Motion," Dkt. No. 40.) Magistrate Judge Robert W.

Lehrburger, to whom this Court referred the matter for general pretrial purposes, issued a Report and Recommendation (the "Report") dated February 12, 2021, recommending that Art Media's Motion be granted in part and denied in part. (Dkt. No. 56.) The Report is incorporated and attached hereto. To date, neither Art Media nor Brant has filed objections to the Report.

When considering the findings and recommendations of a Magistrate Judge, the Court may "accept, reject, or modify [them], in whole or in part." 28 U.S.C. § 636(b)(1). The Court must make a de novo determination of any portions of a magistrate's report or findings to which a party raises an objection but reviews only for "clear error on the face of the record" when there are no timely objections to the report. Banks v. Comm'r of Soc. Sec., No. 19 Civ. 929, 2020 WL 2765686, at *1 (S.D.N.Y. May 27, 2020). Clear error is found only when, upon review of the entire record, the Court is left with "the definite and firm conviction that a mistake has been committed." Laster v. Mancini, No. 07 Civ. 8265, 2013 WL 5405468, at *2 (S.D.N.Y. Sept. 25, 2013) (quoting United States v. Snow, 462 F.3d 55, 72 (2d Cir. 2006)).

Because no objections to the Report have been filed, and the deadline for objections has passed (see Report at 16), the Court reviews for clear error. The Court has reviewed the

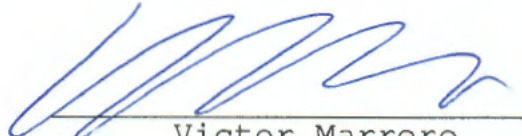
full record of this case, including each of the counterclaims and affirmative defenses Brant raises, the parties' papers submitted in connection with Art Media's Motion, and the analysis and conclusions contained in Magistrate Judge Lehrburger's Report. The Court finds no clear error and therefore adopts the Report in its entirety.

ORDER

Accordingly, for the reasons stated above, it is hereby **ORDERED** that the motion filed by Plaintiff and Counterclaim Defendant Art Media LLC to dismiss the counterclaims, and strike the affirmative defenses, of Defendant and Counterclaim Plaintiff Christopher Brant ("Brant") (Dkt. No. 40) is **GRANTED** in part, insofar as Brant's counterclaims are dismissed without prejudice, Brant's third affirmative defense is stricken without prejudice, and Brant's fourth affirmative defense is stricken with prejudice, and **DENIED** in part as to Brant's second affirmative defense.

SO ORDERED.

Dated: New York, New York
5 March 2021



Victor Marrero
U.S.D.J.